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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/930,235	02/23/1998	ANJA EITRICH	BEIERSDORF45	2748

7590

02/04/2003

NORRIS, MCLAUGHLIN & MARCUS, P.A.
220 EAST 42ND STREET-30TH FLOOR
NEW YORK, NY 10017

EXAMINER

LOVERING, RICHARD D

ART UNIT	PAPER NUMBER
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1712

28

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/930,235

Applicant(s)

ENTRICH ET AL.

Examiner

LOVERING

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on MAR. 29, MAY 25 + NOV. 29, 2002
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 4-8 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 4-8 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

Office Action Summary

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1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on November 29, 2002 has been entered.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 4-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Allard et al. 5,616,331 of record. Allard et al. (Example; paragraph bridging columns 2 and 3; column 5, lines 47-65; and column 6, lines 39-49) disclose transparent or translucent microemulsions of the oil-in-water type containing an oil phase, e.g. liquid petroleum, cetyl-stearyl alcohol containing 15 EO 6.6% and glyceryl stearate 3.4%, nano-pigmentary TiO_2 and an aqueous phase, such microemulsions having been obtained by the phase inversion technique. While the microemulsion of Example 1 of Allard et al. contains more than 11.8% oil phase, it is evident from Allard et al. (column 5, lines 28-43, esp. lines 34-36) that patentees contemplate the use of as little as 5% oily phase and that 10% oily phase is

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preferred by them, and it would have been obvious to one skilled in the art at the time applicants' invention was made to use such low oily phase concentrations in the microemulsions of Allard et al. to render them less expensive by reducing the amount of oily phase relative to the aqueous phase. Moreover, it is well-settled that choice of suitable or optimum concentrations of ingredients is well within the expected skill of a worker in the art. See In re Aller et al., 105 USPQ 223; 220 F. 2d 454.

4. Applicants' arguments filed November 29, 2002 have been fully considered but they are not deemed to be persuasive. The overlap of ultrafine emulsions and microemulsions at the droplet diameter of 100 nm is not insignificant (as argued by applicants). Where ranges overlap, a prima facie case of obviousness exists. In this connection, see In re Wertheim, 541 F. 2d 257; In re Woodruff, 919 F. 2d 1575; and In re Geisler, 116 F. 3d 1465, 1469-71, 43 USPQ 2d 1362, 1365-66 (Fed. Cir. 1997).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9310.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc
January 31, 2003

Richard D. Lovering
RICHARD D. LOVERING
PRIMARY EXAMINER
GROUP 1200 (100)